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MBH ARCHITECTS, INC. aka McNULTY
BRISKMAN HEATH

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

BOVIS LEND LEASE, INC. as assignee
of LNR-LENNAR BRANNAN STREET,
LLC,

Plaintiff,

vs.

MBH ARCHITECTS, INC. aka
McNULTY BRISKMAN HEATH and
DOES 1 through 150, inclusive,

Defendant.

MBH ARCHITECTS, INC. aka
McNULTY BRISKMAN HEATH,

Cross-
Complainant,

vs.

LNR-LENNAR BRANNAN STREET,
LLC, and ROES, 1 through 150,
inclusive,

Cross-
Defendant.

CASE No. C 07-05262 JSW

**THIRD PARTY IMPLADER
COMPLAINT FOR EXPRESS
CONTRACTUAL INDEMNITY AND
DECLARATORY RELIEF**

DEMAND FOR JURY TRIAL

Action Removed: October 16, 2007
Judge: Hon. Jeffrey S. White
Trial Date: April 20, 2009

Third Part Complainant MBH Architects, Inc. ("MBH") alleges:

1. MBH is and was at all times herein mentioned a citizen of the State of California.

2. On information and belief, LNR-LENNAR BRANNAN STREET, LLC ("Lennar") is a California limited liability company.

3. MBH alleges that the true names and capacities, whether individual, corporate or otherwise, of third party defendants Roes 1 through 30 are unknown to MBH at the present time, who therefore sues said third party defendants by such fictitious names. MBH is informed and believes and thereon alleges that each of said third party defendants named herein as a Roe is legally responsible in some manner for the events and happenings herein complained of and thereby proximately caused the damages suffered by MBH and alleged in this cross-complaint. MBH will amend this third party impleader complaint to allege their true names and capacities when ascertained.

4. In doing the things herein alleged, third party defendants, and each of them, including ROE third party defendants, were the agents, employees, and/or representatives of each other and/or acting in the course and scope of said agency, employment and/or representation in the matters herein alleged.

5. The jurisdiction of the court over this subject matter is predicated on 28 U.S.C. §1332 in that it is a civil action between citizens of different states and the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs. Such jurisdiction existed at the commencement of the action and at the time this action was removed to Federal Court.

6. On or about January 24, 2000, MBH and Lennar entered into a written contract (the "Contract") whereby MBH agreed, in consideration for payment of \$2,511,000, by Lennar, to furnish and perform various professional services for the real property and residential homes known as Brannan Square located at 200 Brannan Street in San Francisco, California (hereinafter "Project") as summarized in the Contract attached to this Third Party Impelader Complaint as Exhibit A. As a term and condition of this Contract set forth in Paragraph 6.07, Lennar agreed to indemnify and hold harmless MBH from losses, costs, claims, damages, liabilities and attorneys' fees which MBH incurs as a result of any negligent errors, acts or omissions of Lennar or any contractor or subcontractor employed or retained directly by Lennar.

7. The Contract also provides that "Should any claim or action or proceeding be commenced between the parties hereto or their representatives concerning any provision of this Agreement or the rights and duties of any person or entity in relation thereto, the party prevailing in such action, claim or proceeding, as the case may be whether by out of court settlement or final judgment, shall be entitled, in addition to other such relief as may be granted, to the reasonable sum for attorneys' fees, expert witness and consulting fees, court costs, and all other costs incurred in such action or proceeding and any other appeals in connection therewith."

8. On June 12, 2007, an action was commenced in the Superior Court of the State of California in and for the County of San Francisco, entitled Bovis Lend Lease, Inc., Plaintiff vs. MBH Architects, Inc., as Case Number CGC07-464235. According to the Complaint, Lennar assigned to Bovis all of its rights and remedies against MBH and each of MBH's subconsultants arising out of the Contract. Bovis subsequently filed this action arising out of MBH's alleged failure to provide proper plans and details for the Project, which in turn delayed the completion of the project as well as contributed to significant construction defect claims by the residents of 200 Brannan

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FIRST CAUSE OF ACTION

(Contractual Indemnity)

9. MBH refers to and incorporates herein by reference the allegations of paragraphs 1 through 8 above.

10. MBH and Lennar entered into the Contract in which MBH agreed to furnish and perform various professional services. Under the terms of the Contract, Lennar agreed to indemnify and hold harmless MBH from losses, costs, claims, damages, liabilities and attorneys' fees which MBH incurs as a result of any negligent, errors, acts or omissions of Lennar or any contractor or subcontractor employed or retained directly by Lennar.

11. MBH furnished and performed such professional services.

12. Bovis has filed a Complaint in this action seeking damages arising out of such professional services, and encompassed by the aforementioned indemnity obligations.

13. By virtue of the above-described contracts and/or applicable law Lennar and Roes 1 through 150 must hold MBH harmless and indemnify it for the amount of any judgment or settlement, and for expenses, costs of suit, attorneys' fees and other damages and costs which MBH incurs in connection with this litigation as a result of any negligent, errors, acts or omissions of Lennar or any contractor or subcontractor employed or retained directly by Lennar.

14. MBH has incurred, and continues to incur, necessary and reasonable attorneys' fees and other legal costs in defending this action against Bovis. To the extent that MBH suffers any losses, costs, claims, damages, liabilities or attorneys' fees as a result of any negligent errors and/or omissions of Lennar or any contractor or subcontractor employed or retained directly by Lennar, MBH is entitled to all such losses, costs, claims, damages, liabilities and attorneys' fees from Lennar. The total amount of MBH's costs and attorneys' fees is not yet known and MBH will seek leave of court to insert such amount at the time of trial.

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SECOND CAUSE OF ACTION
(Declaratory Relief)

15. MBH refers to and incorporates herein by reference the allegations of Paragraphs 1 – 14 above.

16. An actual controversy has arisen and now exists between MBH and Lennar concerning their respective rights and duties under the Contract concerning the costs and attorneys' fees provision of the Contract.

17. On the one hand, MBH contends that Lennar is liable for a reasonable sum for attorneys' fees, expert witness and consulting fees, court costs, and all other costs incurred in this action or proceeding brought against MBH by Bovis in the event that MBH is determined to be the prevailing party on the contract. On the other hand, on information and belief, Lennar denies that it is liable to MBH for a reasonable sum for attorneys' fees, expert witness and consulting fees, court costs, and all other costs incurred in this action or proceeding brought against MBH by Bovis in the event that MBH is determined to be the prevailing party on the contract.

18. MBH desires a judicial determination of it and Lennar's right and duties related to this provision in the Contract which allows for an award of reasonable sum for attorneys' fees, expert witness and consulting fees, court costs, and all other costs incurred to the prevailing party.

19. A judicial declaration is necessary and appropriate at this time under the circumstances in order that MBH may ascertain it and Lennar's rights and obligations related to this provision in the Contract which allows for an award of reasonable sum for attorneys' fees, expert witness and consulting fees, court costs, and all other costs incurred to the prevailing party.

20. To date, MBH has begun to incur attorneys' fees, expert witness and consulting fees, court costs, and other costs related to this action by Bovis.

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1 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them,
2 as follows:

- 3 1. For a declaration that Lennar is liable to MBH for a reasonable sum for
4 attorneys' fees, expert witness and consulting fees, court costs, and all other costs
5 incurred in this action or proceeding brought against MBH by Bovis in the event
6 that MBH is determined to be the prevailing party;
- 7 2. For general damages according to proof;
- 8 3. For reasonable attorneys' fees;
- 9 4. For punitive damages;
- 10 5. For costs of suit herein incurred; and
- 11 6. For such other and further relief as the court may deem proper.

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13 Dated: February 26, 2008

LONG & LEVIT LLP

14
15 By



16 JENNIFER A. BECKER
17 JOHN B. SULLIVAN
18 Attorneys for Defendant and Third Party
19 Plaintiff MBH ARCHITECTS, INC. aka
20 McNULTY BRISKMAN HEATH

21 MBH hereby demands trial by jury.

22 Dated: February 26, 2008

LONG & LEVIT LLP

23
24 By


25 JENNIFER A. BECKER
26 JOHN B. SULLIVAN
27 Attorneys for Defendant and Third Party
28 Plaintiff MBH ARCHITECTS, INC. aka
McNULTY BRISKMAN HEATH

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